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ORDER

This is a contract dispute in which Porter alleges that SSI was involved in a fraudulent financing scheme with Shyam K. Chetal (“Chetal”), United Capital Investments, Inc. (“United”), and Advantage Real Estate Pro (“Advantage”) (collectively “Defendants”). *See* Doc. #1 ¶¶ 2-4, 21, 61, 62, 63, 72, 78, 95, 104, Ex. 3. Initially, Chetal, on behalf of United, offered to purchase Porter’s mining claims and pay the maintenance fees owing and due thereon. *See* Doc. #1, Ex. 1; Doc. #1, ¶ 27. Thereafter, Chetal, on behalf of SSI, provided documentary proof to Porter of his financial capability to pay for the valuable mining claims and maintenance fees. *See* Doc. #1,

¹ Refers to the Court's docket number.

Ex. 3. Porter allegedly relied on these documents for assurance of payment and agreed to the offer. *See* Doc. #1, ¶ 90, Ex. 2. Ultimately, Defendants failed to timely pay the maintenance fees and Porter permanently and irrevocably lost all rights to the mining claims. *See* Doc. #1, ¶¶ 39-41. Porter alleges that none of the Defendants had the financial capability or intention to pay the maintenance fees or purchase the mining claims. *See* Doc. #1, ¶ 43. Porter further alleges that Defendants intentionally perpetrated the financing scheme to cause Porter to lose her mining claims, thereby enabling Chetal to purchase the claims directly from the Bureau of Land Management (“BLM”) for a lower price. *See* Doc. #1, ¶¶ 44-46. On December 3, 2013, Porter filed a Complaint alleging claims for breach of contract, tortious breach of contract, fraud, negligence, and breach of the implied covenant of good faith and fair dealing. *See id.*

On February 11, 2014, SSI filed the present Motion to Dismiss on the grounds that all causes of action in the Complaint arise out of an alleged breach of contract by United. *See* Doc. #5, p.2. SSI contends that it had no relevant part in the alleged agreement between Porter and United and was only a party to a third-party agreement (the “Bank Guarantee”) with Continent Finance Ltd. of England (“Continent”).² *See* Doc. #5, p.2; Doc. #1, Ex. 3.

II. Legal Standard

SSI seeks dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. To survive a motion to dismiss for failure to state a claim, a complaint must satisfy the Federal Rule of Civil Procedure 8(a)(2) notice pleading standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That is, a complaint must contain “a short and plain statement of the claim showing that the

² On August 1, 2013, Chetal, as president of SSI, entered into the Bank Guarantee with Continent, wherein Continent agreed to wire two billion dollars USD (\$2,000,000,000) into SSI’s bank account. *See* Doc. #1, ¶ 22, Ex. 3. Documentary proof of the Bank Guarantee was attached to Chetal’s offer to Porter in order to demonstrate Chetal’s financial capability, on behalf of SSI, to render performance under the contract between Porter and Chetal. *See* Doc. #1, ¶¶ 21, 22, 24, 25. Continent, which is not a party to the present litigation, is an English corporation, which was formed on March 3, 2013, and allegedly had a total capital of only one hundred pounds (£100) at the time of the Bank Guarantee. *See* Doc. #1, ¶ 23.

1 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not
2 require detailed factual allegations; however, a pleading that offers “‘labels and conclusions’ or
3 ‘a formulaic recitation of the elements of a cause of action’” will not suffice. *Ashcroft v. Iqbal*,
4 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

5 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,
6 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*,
7 550 U.S. at 570). A claim has facial plausibility when the pleaded factual content allows the
8 Court to draw the reasonable inference, based on the Court’s judicial experience and common
9 sense, that the defendant is liable for the misconduct alleged. *See id.* at 678-79. “The plausibility
10 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that
11 a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with
12 a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement
13 to relief.” *Id.* at 678 (internal quotation marks and citation omitted).

14 In reviewing a motion to dismiss, the Court accepts the facts alleged in the complaint as
15 true. *Id.* However, “bare assertions . . . amount[ing] to nothing more than a formulaic recitation
16 of the elements of a . . . claim . . . are not entitled to an assumption of truth.” *Moss v. U.S. Secret*
17 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 681) (brackets in original)
18 (internal quotation marks omitted). The Court discounts these allegations because “they do
19 nothing more than state a legal conclusion—even if that conclusion is cast in the form of a
20 factual allegation.” *Id.* (citing *Iqbal*, 556 U.S. at 681). “In sum, for a complaint to survive a
21 motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that
22 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Id.*

23 **III. Discussion**

24 SSI asserts that they played no relevant part in the matters complained of in this case and
25 that all of Porter’s claims arise out of United’s alleged breach of a contract to which SSI was not
26 a party. *See* Doc. #5, p. 2. SSI further asserts that Porter failed to meet the heightened pleading
27 standard for claims of fraud. *See* Doc. #4, p. 4. In both regards, the Court disagrees.

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1 Claims grounded in fraud must satisfy the heightened pleading requirements of Federal
2 Rule of Civil Procedure 9. *See* Fed. R. Civ. P. 9(b); *see also Vess v. Ciba-Geigy Corp. USA*, 317
3 F.3d 1097, 1103-04 (9th Cir. 2003). Rule 9 provides: “[i]n alleging fraud or mistake, a party
4 must state with particularity the circumstances constituting fraud or mistake.”
5 Fed. R. Civ. P. 9(b). An allegation of fraud must be “specific enough to give defendants notice
6 of the particular misconduct which is alleged to constitute the fraud so that they can defend
7 against the charge and not just deny that they have done anything wrong.” *Semegen v. Weidner*,
8 780 F.2d 727, 731 (9th Cir. 1985). “Averments of fraud must be accompanied by ‘the who,
9 what, when, where, and how’ of the misconduct charged,” *Vess*, 317 F.3d at 1106 (quoting
10 *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). Moreover, in a fraud suit involving
11 multiple defendants, a plaintiff must inform each defendant of their alleged role in the fraud. *See*
12 *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007).

13 Here, the Court finds that Porter has pled facts sufficient to satisfy Rule 9’s heightened
14 pleading requirements. *See* Doc. #1, ¶¶ 75-92. Porter’s Complaint provided SSI adequate notice
15 of their alleged role in the fraud. *See* Doc. #1, ¶¶ 2-4, 61, 62, 75, 78 (alleging specifically that
16 SSI, acting in concert with the other Defendants, engaged in a financing scheme to perpetrate
17 fraud against Porter). Porter also sufficiently pled the who, what, when, where, and how of the
18 fraudulent conduct. *See* Doc. #7, ¶¶ 1-6 (citing Doc. #1).

19 Contrary to SSI’s averments that it played no relevant part in any of the events giving rise
20 to Porter’s claims, SSI’s Motion to Dismiss confirms that SSI was involved in the transaction as
21 a “guarantor for a bank guarantee.” *See* Doc. #5, 2:17-18. This bank guarantee allegedly played
22 a central role in assuring Porter that Chetal had the financial capability to render performance
23 under the contract. *See* Doc. #1, ¶¶ 61, 62, Ex. 3. Moreover, the Complaint states with
24 particularity the circumstances under which SSI falsely represented to Porter that Chetal and his
25 business entities had sufficient financing available to timely purchase Porter’s mining rights and
26 pay the maintenance fees. *See* Doc. #7, ¶¶ 1-7 (citing Doc. #1). Specifically, Porter alleges that
27 Chetal, as president of SSI, produced documents purporting to verify that Chetal had the financial
28 capability to purchase the mining rights and pay the maintenance fees. *See* Doc. #1, ¶¶ 21, 22,

1 Ex. 3. Porter alleges that she relied on these assurances when she accepted Chetal's offer. *See*
2 Doc. #1, ¶¶ 19, 22. Porter further alleges that Chetal, United, Advantage, and/or SSI never had
3 sufficient financing to pay Porter or the BLM. *See* Doc. #1, ¶¶ 35, 38, 43, 82. Ultimately, Porter
4 alleges Chetal failed to make the agreed upon payment to the BLM because his check was
5 dishonored twice for insufficient funding, thereby causing Porter to permanently and irrevocably
6 lose her rights to valuable mining claims. *See* Doc. #1, ¶¶ 33-35, 38-41, Ex. 4, Ex. 5.

7 Considering the aforementioned allegations, the Court finds that Porter has sufficiently
8 pled facts to plausibly suggest claims against SSI for breach of contract, tortious breach of
9 contract, fraud, negligence, and breach of the implied covenant of good faith and fair dealing.
10 Moreover, the Court finds that Porter has satisfied Rule 9's heightened pleading standards for
11 claims of fraud. Accordingly, SSI's Motion to Dismiss for failure to state a claim under Federal
12 Rule of Civil Procedure 12(b)(6) is denied.

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14 IT IS THEREFORE ORDERED that SSI's Motion to Dismiss (Doc. #5) is DENIED.

15 IT IS SO ORDERED.

16 DATED this 27th day of June, 2014.

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19 LARRY R. HICKS
20 UNITED STATES DISTRICT JUDGE
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